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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/633,357

08/01/2003

Henrik E. Hedlund

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06/23/2009

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EXAMINER

PATS, JUSTIN

ART UNIT

PAPER NUMBER

3623

MAIL DATE

DELIVERY MODE

06/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|--|--|---|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/633,357</p> | <p>Applicant(s) HEDLUND ET AL.</p> | |
| | <p>Examiner Justin M. Pats</p> | <p>Art Unit 3623</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): The rejection of claims 1, 3-20 under 35 U.S.C. 101.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,3-22 and 25-34.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Andre Boyce/
Primary Examiner, Art Unit 3623

Continuation of 11. does NOT place the application in condition for allowance because: Examiner initially notes that the rejection under 35 U.S.C. 101 of claims 1, 3-20 is hereby removed in light of Applicant's amendments of 6/8/09. Both Fields and Andre teach the computer implementation aspects of the amended claims (Fields, Figs. 4A-B; Andre, Figs. 1-3). Applicant argues that Click2Staff does not teach or suggest processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules. Applicant's Remarks, 6/8/09, pg. 8-9. In response, Examiner respectfully disagrees. Examiner is afforded the broadest reasonable interpretation of the claim language so long as Applicant has not provided a clear, specific definition for its claim terms. Here, Applicant has not provided, in either its specification or the claims, clear, specific definitions for the phrases pattern recognition procedure, historical shift pattern, particular position, and past schedules. As such, a pattern recognition procedure can be reasonably interpreted as any way of recognizing a representative sample of tendencies. Click2Staff's use of an algorithm to analyze historical bank data to discover customer traffic trends meets this definition because a Click2Staff's algorithm uses a representative data sample, for example, a year's worth of bank transaction data as evidenced by Norton Miller, to recognize a tendency associated with that data, such as that the location's busiest time is shifting from the afternoon to the morning hours, as evidenced by Berkofsky. The pattern is historical in that the transaction data used in the analysis relates to transactions that occurred in the past. The pattern concerns the term shift in that the morning and afternoon hours represent scheduled periods of work for tellers and other bank employees. Furthermore, as evidenced by Hawaiian Bank, Click2Staff is readily capable of forecasting and scheduling in response to shift length rules. With respect to the term particular position, first, this term as claimed has the word for, preceding it, thus demonstrating that it is a recitation of the intended use of the claimed invention, which must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, Click2Staff applies to a particular position in that it applies to bank teller staffing, and it applies to a particular bank location or branch, which also could be interpreted reasonably as a particular position. Additionally, Click2Staff is at least readily capable of applying its software to a particular position, so this limitation is met. Finally, with respect to the term past schedules, past schedules are processed by Click2Staff because Click2Staff analyses a file or list of past transaction data that is time-specific and includes such time-related data..